



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2017–N179; FXES11130200000–189–FF02ENEH00]**

**Notice of Intent to Prepare a Draft Environmental Assessment for a Proposed Safe Harbor Agreement for Spikedace, Loach Minnow, and Gila Chub; Eagle Creek and Lower San Francisco River in Greenlee and Graham Counties, Arizona**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, advise the public that we intend to prepare a draft environmental assessment (EA), pursuant to the National Environmental Policy Act, to evaluate the impacts of, and alternatives to, the proposed issuance of an enhancement of survival permit under the Endangered Species Act of 1973, as amended, to Freeport-McMoRan, Inc., Freeport-McMoRan Morenci, Inc., and the Morenci Water and Electric Company (FMMI/MWE) (collectively referred to as the applicant) for

conservation of federally- listed fish species. The applicant proposes to draft a safe harbor agreement. Via this notice, we also open a public scoping period.

**DATES:** Written suggestions or comments on alternatives and issues to be addressed in the Service's draft environmental analysis must be received by close of business on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** To request further information or submit written comments, use one of the following methods, and note that your information request or comment is in reference to the FMMI/MWE NEPA scoping:

- Email: [incomingazcorr@fws.gov](mailto:incomingazcorr@fws.gov);
- U.S. Mail: Field Supervisor, Arizona Ecological Services Office, 9828 N. 31st Avenue, Suite C3, Phoenix, Arizona 85051;
- Fax: 602-242-2513; or
- Phone: 602-242-0210.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a draft EA, pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.; NEPA), to evaluate the impacts of, and alternatives to, the proposed issuance of an enhancement of survival permit (EOS Permit) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; ESA), to Freeport-McMoRan, Inc., Freeport-McMoRan Morenci, Inc., and the Morenci

Water and Electric Company (FMMI/MWE) (collectively referred to as the applicant) for conservation of three federally-listed species: the endangered spikedace (*Meda fulgida*), endangered loach minnow (*Tiaroga cobitis*), and endangered Gila chub (*Gila intermedia*) (collectively referred to as covered species). In support of the EOS Permit, the applicant proposes to draft a safe harbor agreement (SHA) for land and water uses at Eagle Creek and the lower San Francisco River, as well as for long-term management and monitoring activities, including construction of a nonnative fish barrier; an exotic species study; annual surveys for covered species and other fish species; and the continued implementation of the *Spikedace and Loach Minnow Management Plan* (October 2011) at Eagle Creek and the lower San Francisco River in Greenlee and Graham Counties, Arizona.

## **Background**

Section 9 of the ESA and its implementing regulations prohibit “take” of fish and wildlife species listed as endangered or threatened under the ESA. The ESA defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct” (16 U.S.C. 1533). The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, we may, under specified circumstances, issue permits that allow the take of federally listed species, provided that the take is incidental to, but not the purpose of, otherwise lawful activity. EOS Permits issued to applicants in association with approved SHAs authorize

incidental take of the covered species from implementation of the conservation activities and ongoing covered activities above the baseline condition. Baseline condition for a species could be described as the existing number of individuals, acres of habitat, or length of occupied stream present in the permit area prior to implementation of the SHA.

Application requirements and issuance criteria for EOS permits for SHAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(c)(2)(ii) and 17.32(c)(2)(ii), respectively. See also the joint policy on SHAs, which the Service and the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service published in the Federal Register on June 17, 1999 (64 FR 32717).

The purpose of issuing the proposed EOS Permit is to authorize take associated with the applicant's proposed activities while conserving covered species and their habitats. We expect that the applicant will request EOS Permit coverage for a period of 50 years.

### **The Applicant's Proposed Project**

The proposed activities would include ongoing land and water management activities associated with water-related improvements, including a diversion dam and appurtenant pumping facilities and pipelines, groundwater pumping stations and water transmission pipelines, access roads, power lines, and related infrastructure. During the term of the SHA, the permittee anticipates improving, replacing, repairing, reconstructing, and maintaining these facilities and related infrastructure on land adjacent

to Eagle Creek and the lower San Francisco River. We have worked with the applicant to design conservation activities expected to have a net conservation benefit to the spikedace, loach minnow, and Gila chub within the area to be covered under this proposed SHA. These conservation activities would include the following:

(1) Allocation of \$4,000,000 over the next 10 years to complete the design and construction of a fish barrier on Eagle Creek to protect and enhance aquatic habitat for the covered species. Design of the barrier is almost complete, and the location for the barrier has been selected by the applicant. The fish barrier would prevent nonnative aquatic species from moving upstream into the upper portion of the creek, protecting the covered species and their habitat. Loach minnow and Gila chub are primarily found above the proposed barrier location, and the best remaining habitat for the three species is also above the proposed barrier location.

(2) Development and implementation of a 3-year monitoring program to detect the presence of other types of nonnative invasive species (e.g., bullfrogs and crayfish) within the upper reach of Eagle Creek, and investigation of the practicability and cost of actions to suppress the populations of these species in the upper segment of Eagle Creek, above the fish barrier.

(3) Annual monitoring along Eagle Creek and the lower reach of the San Francisco River to gather data for use in informing future conservation and management activities and assisting in the recovery of the Covered Species.

These conservation activities are expected to:

(1) Protect existing upper Eagle Creek populations of spikédace, loach minnow, and Gila chub, as well as other native fish species, against future upstream incursion of nonnative aquatic organisms from the Gila River and lower Eagle Creek. Spikédace, loach minnow, and Gila chub all occur in approximately 10 to 15 percent of their historical ranges, having been extirpated from other areas due to habitat alteration, competition with or predation by nonnative species, and other factors. The Gila River and lower Eagle Creek are currently occupied by a variety of nonnative fish species known to be detrimental to native fishes, including flathead catfish, channel catfish, smallmouth bass, red shiner, and green sunfish.

(2) Provide data that can be used to inform future management actions to remove nonnative species (e.g., crayfish and bullfrogs) within Eagle Creek.

(3) Provide a cooperative approach that allows for continuation of mining operations and native fish conservation.

Ongoing land and water management activities, as well as conservation activities under the SHA, would occur along portions of Eagle Creek and the lower San Francisco River in Graham and Greenlee Counties, Arizona, on lands currently owned by the applicant.

### **Potentially Affected Species**

The applicant may apply for an EOS Permit to cover the spikédace, loach minnow, and Gila chub. The permit area may include an additional three species federally listed as threatened: the western distinct population segment of the yellow-

billed cuckoo (*Coccyzus americanus*), Chiricahua leopard frog (*Lithobates chiricahuensis*), and narrow-headed gartersnake (*Thamnophis rufipunctatus*). The ultimate list of species covered by the proposed EOS Permit and associated SHA may change based on the outcome of more detailed reviews of the best available science, changes to the list of protected species, or further assessments of the likelihood of take from the proposed activities.

### **Possible Alternatives in the Environmental Assessment**

The proposed action presented in the draft EA would be compared to the No-Action Alternative. The No-Action Alternative represents the estimated future conditions without the proposed Federal action.

#### *No-Action Alternative*

In the No-Action Alternative, the applicant would not request, and we would not issue, an EOS Permit for the ongoing use and management of land and water along Eagle Creek and the lower San Francisco River. Therefore, ongoing use and management of land and water on the applicant's property, should incidental take occur, would require the applicant to seek coverage for incidental take in some other manner. Additionally, the non-native fish barrier would not be built, and monitoring would not occur.

#### *Proposed Alternative*

The proposed action would be the issuance of an EOS Permit for the covered species for the conservation and covered activities within the plan area, when and if the

applicant determines to move forward with an SHA and development of a nonnative fish barrier. The draft SHA, which must be consistent with the final SHA policy (64 FR 32717), would be developed in coordination with the Service and implemented by the applicant.

The proposed alternative would need to provide a net conservation benefit for the listed species covered by the SHA, and would need to provide long-term protection of native fish habitat in portions of upper Eagle Creek and the lower San Francisco River. Actions covered under the requested EOS Permit may include possible take of the species associated with proposed land and water management activities above the baseline condition for the species, as well as construction of the nonnative fish barrier.

#### *Other Alternatives*

Possible alternatives include mechanical or chemical stream renovation with barrier construction, or alternative sites for barrier construction. We are requesting information regarding other reasonable alternatives during this scoping period.

#### **National Historic Preservation Act**

We will use and coordinate the NEPA process to fulfill our obligations under the National Historic Preservation Act [(Pub. L. 89-665, as amended by Pub. L. 96-515, and as provided in 36 CFR 800.2(d)(3) and 800.8c)]. A cultural resource inventory has already been completed for the project; we will address the findings of that report and continue coordinating with tribes and the State Historic Preservation Office during project development.

**Environmental Review**

The Service will draft an EA to analyze the proposed action, as well as other alternatives, and the associated impacts of each alternative on the human environment and each species covered for the range of alternatives to be addressed. The draft EA is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources, such as vegetation, wetlands, wildlife, geology, and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice, as appropriate for the proposed action.

## **Public Availability of Comments**

Written comments received will become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **Authority**

We publish this notice in compliance with NEPA and its implementing regulations (40 CFR 1501.7, 1506.6, and 1508.22), and section 10(c) of the ESA (16 U.S.C. 1539(c)).

Amy Lueders,

**Regional Director, Southwest Region,**

**Albuquerque,**

**New**

**Mexico.**

[FR Doc. 2018-06713 Filed: 4/2/2018 8:45 am; Publication Date: 4/3/2018]